

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218367 **DATE:** June 17, 1985
MATTER OF: Engineered Air Systems

DIGEST:

Bidder's failure to specify shipping point does not render a bid nonresponsive where the invitation excludes transportation costs from price evaluation, since the omission had no effect on the competitive standing of the bidders.

Engineered Air Systems, Inc. (Engineered Air) protests the award of contract to any bidder other than itself under Invitation for Bids (IFB) No. DAAA09-85-B-0132, which was issued by the Army for a purchase of three types of maintenance vehicles. Engineered Air contends that the bids submitted by the apparent low bidder, Wedtech Corporation, and the apparent second low bidder, Libby Corporation, were nonresponsive because they failed to identify their respective points of origin for shipment of the equipment, as allegedly required by the solicitation.

We deny the protest.

Engineered Air argues that the solicitation required that bids be submitted on the basis of "f.o.b. [free on board] origin," and that bidders identify their shipping point of origin by completing Section F-4 of the IFB. Because the two lowest bidders did not complete paragraph 1 of this clause, the protester argues that it is unclear whether these bids are based on f.o.b. origin. Furthermore, the protester argues that even if the bids can be read to imply the f.o.b. origin basis, bidders who do not designate their point of origin retain an important performance option which necessarily affects price and prejudices the competitive standing of bidders who do comply by committing themselves to a specific origin point.

The Army, on the other hand, argues that the solicitation clearly established that regardless of the shipping point, contract goods were to be delivered to the government f.o.b. origin. Wedtech did not take exception to this requirement in its bid. Furthermore, the Army argues that

the failure to specify the f.o.b. origin point in these bids did not render them nonresponsive because transportation costs had been excluded from the price evaluation under the terms of the solicitation. The Army had decided that it could not use transportation costs as an evaluation factor because the end destinations for these items were not known at the time of bid opening. Therefore, the IFB incorporated Federal Acquisition Regulation 52.247-50 by reference, providing that transportation costs would not be an evaluation factor for award. See 48 C.F.R. § 52.247-50 (1984). According to the Army, the shipping point did not affect the bid price or go to the substance of the bid, and therefore was not a material term of the solicitation.

Our Office has held that the integrity of the competitive bidding process requires that awards of contracts for required services or supplies be made upon the basis of the specifications exactly as advertised, including delivery and other performance requirements, and only inconsequential or immaterial defects or variations which do not affect the price, quantity, or quality of the articles offered may be waived. Barber-Colman Company, B-203132, Aug. 11, 1981, 81-2 CPD 122. While our Office has in the past determined that the omission of shipping information could render a bid non-responsive, we have only done so where the designation of the shipping point was considered a material part of the solicitation. See Le Prix Electrical Distributors, Inc., B-206552, July 6, 1982, 82-2 CPD ¶ 18. This would be the case where transportation costs were an evaluation factor, since these costs could only be calculated if the shipping point of origin were known. Here, since the destination point was not known, providing a specific point of origin would still not enable the agency to calculate transportation costs and transportation costs were therefore expressly excluded as a factor in evaluating bids. Under these circumstances, we do not consider the point of origin to be a material term of the solicitation. Its omission could therefore be waived without being prejudicial to other bidders. See Industrial Design Laboratories, Inc., B-216639, Nov. 13, 1984, 84-2 CPD ¶ 523.

The protester has submitted a sworn affidavit by one of its senior employees to support its argument that Engineered Air would be prejudiced by the Army's

acceptance of a bid which omitted the point of origin information. The essence of this argument appears to be that a bidder who does not designate its point of origin remains free to choose whichever of its production facilities may be most advantageous to the firm, whereas a bidder who does commit himself to a point of origin loses the option of changing its production location. According to the protester, this "difference in levels of commitment" necessarily affects price and can affect the competitive standing of bidders.

We do not find this argument persuasive. The "f.o.b. origin" term indicates that responsibility for the shipment, including the risk of loss or damage and any related expenses, remains with the contractor until the goods are delivered to a carrier at the contractor's point of origin. "Delivery" may mean on board the indicated type of conveyance at a designated point in the city from which shipment will be made, or to the carrier's freight station, or to a specific point within the designated f.o.b. commercial zone. The contractor does not pay transportation costs beyond the f.o.b. origin point, and therefore is not concerned with the distance between his production facilities and the product's end destination. The contractor can freely choose that production facility which is most advantageous to him when he completes his bid, knowing that his point of origin will have no bearing on the competitiveness of his bid. Since all bidders were free to choose their point of origin when they submitted their bids and since transportation costs are not considered in the evaluation of the bids, the choice of shipping point is irrelevant to the competitive standing of the bidders.

Moreover, while Wedtech did not designate its point of origin on its bid, it did designate a specific place of performance. In Section K-20 of the IFB, entitled "Place of Contract Performance and Shipping Point," a space was provided for bidders to indicate where the contract would be performed and the point from which the goods would be shipped. Wedtech inserted "Euclid Equipment," with an address in Wheatley Heights, New York, as its place of performance but did not specifically designate a shipping point. Therefore, even if we accepted Engineered Air's argument that a bidder who did not commit to a specific point of origin would retain an unfair advantage, we would

B-218367

not find that argument persuasive here. Because Wedtech has designated a specific place of performance, the logical point of origin for the shipment is one as close as possible to the given production site. Wedtech would only incur more expense by later choosing a shipping point of origin which was different from the performance location, since it would be responsible for the goods until delivery to a carrier.

Under the terms of this solicitation, the omission of a specific point of origin did not render Wedtech's bid nonresponsive or affect the competitive standing of the bidders. This omission can therefore be waived without being prejudicial to the other bidders. Since Engineered Air has not shown that either of the two lower bids took exception to any material solicitation terms, which is the test of a responsive bid, Ven-Tel, Inc., B-203397, July 1, 1981, 81-2 CPD ¶ 3, the bids are responsive.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel